

Reasoned
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

REVIEW APPLICATION NO.200/00020/2018
(in OA No.200/01073/2015)

Jabalpur, this Monday, the 08th day of April, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Union of India through its General Manager, West Central Railway, Indira Market, Jabalpur, M.P.
2. Divisional Railway Manager (P), West Central Railway, Jabalpur Division, Jabalpur, M.P. **-Applicants**

(By Advocate-**Shri N.S. Ruprah**)

V e r s u s

1. Sanjay Gupta, S/o Santosh Kumar Gupta, Senior Assistant Loco Pilot, DOB : 01.07.1980, R/o C/o Vijay Ku. Gautam, Pushpraj Colony, Gali No. 5 B, Satna, M.P.
2. Manmohan Kushwaha, S/o Late Ram Sanehi, Senior Assistant Loco Pilot, DOB : 20.07.1980, R/o C/o Vijay Ku. Gautam, Pushpraj Colony, Gali No.5B, Satna, M.P.
3. Pramod Kumar Upadhyay, S/o Shri Naval Kishor Upadhyay, Senior Assistant Loco Pilot, DOB : 03.02.1983, R/o C/o Gauri Shankar Tripathi, Paschim Med, Jagatdev Pond, Satna, M.P.
4. Naval Kishor, S/o Shri Kamal Kishor Prasad, Senior Assistant Loco Pilot, DOB : 25.11.1984, R/o C/o Jawahar Lal Jain, Pushparaj Colony, Behind Khajuraho Hotel, Satna, M.P.
5. Shashi Shekhar, S/o Shri Braj Bihari Singh, Senior Assistant Loco Pilot, DOB : 20.05.1986, R/o C/o Vijay Ku. Gautam, Pushpraj Colony, Gali No. 5B, Satna, M.P.

6. Subhash Chandra Singh, S/o Shri Harinandan Singh, Senior Assistant Loco Pilot, DOB : 01.01.1985, Working in the O/o CCCOR Office, WestCentral Railway, Satna, M.P.
7. Vivek Kumar Sharma, S/o Shri Ramdas Sharma, Senior Assistant Loco Pilot, DOB : 15.07.1981, R/o CCCOR Office, West Central Railway, Satna, M.P.
8. Abhishek Kumar, S/o Shri Shividani Prasad, Senior Assistant Loco Pilot, DOB : 15.10.1988, R/o C/o Arvind Kushwaha, H. No.10/11, Ramvihar Colony, Gali No.1, Satna, M.P.
9. Dilip Kumar, S/o Shri Jogendra Prasad Singh, Senior Assistant Loco Pilot, DOB : 02.05.1984, Working in the O/o CCCOR Office, West Central Railway, Satna, M.P.
10. Arun Kumar Singh, S/o Shri Raja Ram Singh, Senior Assistant Loco Pilot, DOB : 24.06.1985, working in the O/o CCCOR Office, West Central Railway, NKJ, Katni, M.P.
11. Shividhari Singh, Senior Assistant Loco Pilot, DOB : 16.02.1984, Working in the O/o CCCOR Office, West Central Railway, NKJ, Katni, M.P.
12. Raviranjan Kumar, S/o Shri Raj Vallabh Prasad, Senior Assistant Loco Pilot, DOB : 15.02.1985, R/o CCCOR Office, West Central Railway, NKJ, Katni, M.P.
13. Rakesh Kumar Yadav, S/o Shri Mahadev Prasad Yadav, Senior Assistant Loco Pilot, DOB : 05.11.1980, Working in the O/o CCCOR Office, WestCentral Railway, Satna, M.P.
14. Shailendra Singh, S/o Shri Parasnath Singh, Senior Assistant Loco Pilot, DOB : 09.12.1984, Working in the O/o CCCOR Office, West Central Railway, Satna, M.P.
15. Anand Murari, S/o Shri Rampravesh Singh, Senior Assistant Loco Pilot, DOB : 01.01.1979, R/o C/o Vijay Kumar Gautam, Pushpraj Colony, Gali No.5, Satna, M.P.
16. Anuj Nath, S/o Shri Goraknath, Senior Assistant Loco Pilot, DOB : 18.01.1986, Working in the O/o CCCOR Office, West Central Railway, Satna, M.P.

17. Satish Kumar Sahu, S/o Dalchand Sahu, Senior Assistant Loco Pilot, DOB : 29.06.1978, R/o 195 Bhagat Singh Ward, Panagar District, Jabalpur, M.P.

18. Vivek Mehloniya, S/o Shri Harprasad Mehloniya, Senior Assistant Loco Pilot, DOB : 18.10.1978, R/o H. No. 1749, Ranidurgawati Ward, Radha Kunj, Jabalpur, M.P.

19. Manish Chakrawarti, S/o Shri Suresh Chkrawarti, Senior Assistant Loco Pilot, DOB : 09.06.1983, Working in the O/o CCCOR Office, WestCentral Railway, Jabalpur, M.P..

20. Kamlesh Prasad, S/o Shri Ayodhya Prasad, Loco Pilot Shunter – II, O/o CCCOR, WestCentral Railway, NKJ, Katni, M.P.

21. Satish Kumar, S/o Shri Raghuveer Prasad Meena, Loco Pilot Shunter – II, O/o CCCOR, West Central Railway, NKJ, Katni, M.P
483501

-Respondents

(By Advocate- Shri S.K.Mishra)

O R D E R

By Ramesh Singh Thakur, JM-

This Review Application has been filed by the applicants to review the order dated 05.04.2018 passed by this Tribunal in Original Application No.200/01073/2015 (Sanjay Gupta and others vs. Union of India and others). Along with this Review Application, the applicant has also filed M.A. No.200/00700/2018 for condoning the delay in filing the Review Application.

2. The main ground for this Review Application is that as per Para 5 of the impugned order, this Tribunal has passed the order to the fact that unless the mandatory exercise of collecting the

quantifiable data is conducted, no authority or government can follow the rule of reservation in promotion. Since admittedly, in railways or in any other respondent-department, no such exercise is conducted, their action in following the rule of reservation in promotion is unsustainable.

3. It has further averred in the application that the correct fact is that the petitioners/railways had assessed the vacancies in the promotional post of Loco Pilot Shunter (II&I) and it was found that giving the appropriate percentage of reservation was essential to ensure proper representation of SC and ST categories on the said promotional post. A copy of note sheet dated 15.01.2015 drawn by the office of the applicants is annexed as Annexure RA-2.

4. We have heard the learned counsel for the parties and also gone through the documents including the Original Application attached with the Review Application.

5. In the main record of the O.A., the respondents had filed reply on 15.01.2016 whereby the respondents have submitted that the total sanctioned of the Loco Pilot Shunter is 127 in the Jabalpur Division. As per roster applicable in the Jabalpur Division 98 posts of Loco Pilot Shunter have been earmarked for Unreserved Category (UR), 19 Scheduled Caste (SC) and 10 Scheduled Tribe (ST). It has been submitted by the respondent-department that the

vacancy of Loco Pilot Shunter was assessed on 05.02.2015 and after assessment of the vacancy it was found that 79 post of Unreserved Category (UR), 15 Schedule Caste (SC) and 09 Scheduled Tribe (ST) are lying vacant. The posts of Loco Pilot Shunter are filled up on the basis of roster applicable in the Railway Jabalpur Division. List of suitable candidates were published and the promotion order was issued in five phases. The posts of Loco Pilot Shunter have been filled up strictly in accordance with the reservation roster applicable in the respondent-department. The grievances of the applicant regarding their candidature are not considered in the light of principles laid down by Hon'ble Supreme Court in the matters of M.Nagraj vs. Union of India and others. In the main O.A. which has been decided along with other connected O.As by way of common order dated 05.04.2018, this Tribunal has specifically dealt with this issue in Para 5 of the said order. As in the main reply of the O.A., there is no whisper of words regarding the collecting the quantifiable data which should be followed before the rule of reservation in promotion is executed. Resultantly this Court in the said O.A. No.200/1073/2015 along with other OAs by way of common order has directed the respondents to act in terms of M. Nagaraj i.e. without following the rule of reservation in promotions and to

redraw the promotional lists/panels, if already issued, with all consequential benefits, however, without any back wages in the circumstances. So, the grounds taken in the Review Application are after thought and these grounds were never raised before this Tribunal while hearing the Original Application. It is settled law that in the Review Application the scope of the Tribunal is limited and if there is an error apparent on the face of record only in that events the review can be done.

6. The power of review available to this Tribunal is the same as has been given to a Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. The apex court has clearly stated in **Ajit Kumar Rath Vs. State of Orissa and others**, (1999) 9 SCC 596 that: “a review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it”. This Tribunal can not review its order unless the error is plain and apparent. It has clearly been further held by the apex court in the said case that: “[A]ny other attempt, except an attempt to correct an apparent error or an attempt not based on any

ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment”.

7. Hon'ble Supreme Court in the matters of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.)**, (1995)1 SCC 170 referring to certain earlier judgments, observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

8. It is also settled principle of law that the Tribunal cannot act as an appellate court for reviewing the original order. This proposition of law is supported by the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Tarit Ranjan Das**, 2004 SCC (L&S) 160 wherein their lordships have held as under:

“The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and ***rehearing of the matter to facilitate a***

change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application”.

9. Hon'ble Supreme Court in the matters of **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008)2 SCC (L&S) 735 scanned various earlier judgments and summarized the principle laid down therein, which reads thus:

“35. The principles which can be culled out from the above-noted judgments are:

- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/ analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.*
- (iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*
- (v) An erroneous order/ decision cannot be corrected in the guise of exercise of power of review.*
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*
- (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*
- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”*

10. The applicants have filed M.A. No.200/700/2018 for condoning the delay in filing the Review Application. This Bench has already decided the issue of maintainability on the ground of condonation of delay in filing the Review Application vide order dated 21.12.2017 passed by this Tribunal in Review Application No.200/00001/2017, wherein this Bench has dismissed the Review Application on the ground of delay in filing review. Further this Bench has relied upon the judgment passed by the Hon'ble High Court of Andhra Pradesh in G. Narasimha Rao vs. Regional Director of School Education and others, 2005 (4) SLR 720. So, this M.A. No.200/700/2018 is also rejected.

11. Since no error apparent on the face of record has been pointed out by the applicant in the instant Review Application, warranting review of the order, in terms of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, the present Review Application is misconceived and is liable to be dismissed.

12. Resultantly, this Review Application is dismissed.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member